

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

WILLIAM ERIC COONTZ,

Petitioner,

v.

CIVIL ACTION No. 5:22-CV-212
Judge Bailey

SHELBY O. SEARLS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge Mazzone [Doc. 11]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Mazzone for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Mazzone filed his R&R on September 19, 2022, wherein he recommends that petitioner's § 2254 Petition for a Writ of Habeas Corpus [Doc. 1] be denied and dismissed without prejudice, and that the Motion for Leave to Waive State Court Proceedings [Doc. 2] and Motion for Appointment of Counsel [Doc. 3] be denied. Moreover, Magistrate Judge Mazzone recommends that the Application and Affidavit to Proceed Without Prepayment of Fees [Doc. 7] and Motion for Leave to Conduct Discovery and Order for Respondent to Produce all Discovery Material [Doc. 10] be denied as moot. For the reasons that follow, this Court will adopt the R&R.

II. STANDARD OF REVIEW

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). Nor is this Court required to conduct a *de novo* review when the party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." **Orpiano v. Johnson**, 687 F.2d 44, 47 (4th Cir. 1982).

In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). *Pro se* filings must be liberally construed and held to a less stringent standard than those drafted by licensed attorneys, however, courts are not required to create objections where none exist. **Haines v. Kerner**, 404 U.S. 519, 520 (1972); **Gordon v. Leeke**, 574 F.2d 1147, 1151 (4th Cir. 1971).

Here, objections to Magistrate Judge Mazzone's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure. Petitioner timely filed his objections [Doc. 14] on October 4, 2022. Accordingly, this Court will review the portions of the R&R to which objection was filed

under a *de novo* standard of review. The remainder of the R&R will be reviewed for clear error.

III. DISCUSSION

A. Objections to R&R

Petitioner raises two (2) objections to the R&R. First, petitioner objects to Magistrate Judge's finding that "petitioner (the state) [(sic)] has not been afforded a 'full and fair opportunity' to correct the alleged violation of petitioner's federal rights." See [Doc. 14 at 1–3]. Petitioner asserts the State has been "afforded several opportunities to correct the violations of petitioner's 5th and 14th Amendment of the United States Constitution." See [Id. at 1].

Second, petitioner objects to Magistrate Judge Mazzone's finding that petitioner did not exhaust his claims by providing each claim to the state court. See [Id. at 3].

"When only a general objection is made to a portion of a magistrate judge's report-recommendation, the Court subjects that portion of the report-recommendation to only a clear error review." *Williams v. New York State Div. of Parole*, 2012 WL 2873569, at *2 (N.D.N.Y. July 12, 2012). Conducting a review of Magistrate Judge Mazzone's analysis, this Court finds that the issues raised by petitioner in both of his objections were thoroughly considered. Thus, petitioner's objections are overruled.

The Court is of the opinion that Magistrate Judge Mazzone's R&R accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, having found no clear error in the remainder of the magistrate judge's well-reasoned review of the pleadings, petitioner's objections [Doc. 14] are **OVERRULED**,

and it is the opinion of this Court that the Report and Recommendation [**Doc. 11**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. Accordingly, this Court **ORDERS** that petitioner's § 2254 Petition for a Writ of Habeas Corpus By a Person in State Custody [**Doc. 1**] is **DENIED** and **DISMISSED WITHOUT PREJUDICE**. The Motion for Leave to Waive State Court Proceedings [**Doc. 2**] and Motion for Appointment of Counsel [**Doc. 3**] is **DENIED**. Moreover, the Application and Affidavit to Proceed Without Prepayment of Fees [**Doc. 7**] and Motion for Leave to Conduct Discovery and Order for Respondent to Produce all Discovery Material [**Doc. 10**] are **DENIED AS MOOT**.

The Clerk is hereby **DIRECTED** to **STRIKE** the above-styled case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: October 4, 2022.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE